

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DePuy Mitek, Inc.	)	
a Massachusetts Corporation	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-12457 PBS
	)	
Arthrex, Inc.	)	
a Delaware Corporation	)	
	)	
Defendant.	)	

**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR LEAVE TO FILE  
RESPECTIVE MEMORANDA OF LAW IN SUPPORT OF SUMMARY JUDGMENT  
MOTIONS AND RESPECTIVE MARKMAN BRIEFS IN EXCESS OF PAGE LIMIT  
SET BY LOCAL RULE 7.1(b)(4)**

Plaintiff DePuy Mitek, Inc. ("DePuy Mitek") and defendants Arthrex, Inc. ("Arthrex") and Pearsalls, Ltd. ("Pearsalls") (collectively, "the parties") submit this Memorandum in support of their joint motion for leave to file respective memoranda of law in support of summary judgment motions and respective *Markman* briefs in excess of the page limit set by local rule 7.1(b)(4). The parties believe that by granting their joint motion, the Court will be better informed and better positioned to render a decision on both claim construction and the dispositive issues, which may ultimately eliminate the need for trial or narrow the issues for trial.

This is a patent infringement case in which DePuy Mitek has asserted infringement of U.S. Patent No. 5,314,446 (“the ‘446 patent”) through Arthrex’s and Pearsalls’ respective actions in connection with FiberWire® surgical suture. In turn, Arthrex and Pearsalls assert that the ‘446 patent is not infringed and that the ‘446 patent is invalid and unenforceable. The ‘446 patent and the accused FiberWire® suture present complex technical and legal issues in the fields of suture manufacturing and polymer chemistry.

For example, with regard to the *Markman* briefs, the parties will be asking the Court to decide the meaning of the claim term “PE.” In order to do so, the parties will be providing the Court with detailed explanations as to how the term is used in the ‘446 patent and also as to how the term would have been understood by a person of ordinary skill in the suture art at the time of the invention.

The parties will also be asking the Court to decide the meaning of the claim term “consisting essentially of” and the definition of the basic and novel characteristics of the claimed invention. In order to do so, the parties will be presenting their positions on what they believe to be the “basic and novel characteristics of the claimed invention,” as required under the relevant case law. This discussion will necessarily involve a detailed technical discussion of the ‘446 patent invention.

The summary judgment motions will involve multiple issues, the support for which will require a recitation of undisputed facts, detailed technical discussions of the

teachings of the '446 patent and the prosecution history of the '446 patent, the construction of FiberWire® suture as well as the construction of other sutures described in the prior art.

For all the foregoing reasons, the parties request that the Court enter an Order granting the parties' joint motion for leave to file: i) up to 30 pages of memoranda of law in support of their respective summary judgment motion; and ii) respective *Markman* briefs of up to 25 pages.

Dated: August 7, 2006

Respectfully submitted,

Counsel for Plaintiff

Counsel for Defendants

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By: /s/Charles W. Saber

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